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Sunset Review
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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Sunset Review of the
Antidumping Duty Order on Steel Concrete Reinforcing Bars from
Latvia; Preliminary Results

Summary

We have analyzed the responses of the interested parties in the sunset review of the antidumping duty order covering steel concrete reinforcing bars from Latvia. We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margins likely to prevail

History of the Order

On June 22, 2001, the Department of Commerce (“the Department”) published its final determination in the investigation of steel concrete reinforcing bars from Latvia finding dumping margins of 17.21 percent for Joint Stock Company Liepajas Metalurgs and 17.21 percent for the all others rate. See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Latvia, 66 FR 33530 (June 22, 2001). On September 7, 2001, the Department published an antidumping duty order on steel concrete reinforcing bars from Latvia. See Antidumping Duty Orders: Steel Concrete Reinforcing Bars from Belarus, Indonesia, Latvia, Moldova, People’s Republic of China, Poland, Republic of Korea and Ukraine, 66 FR 46777 (September 7, 2001).

Since the issuance of the antidumping duty order, the Department has conducted three administrative reviews and is in the process of a fourth.¹ There have been no changed-circumstances determinations or duty-absorption findings. Several Harmonized Tariff Schedule categories have been added to the scope, but the scope description itself has not changed. The order remains in effect for all manufacturers, producers, and exporters of the subject merchandise from Latvia.

On August 1, 2006, the Department published the notice of initiation of the sunset review of the antidumping duty order on steel concrete reinforcing bars from Latvia pursuant to section 751(c) of the Tariff Act of 1930, as amended, (“the Act”). See Initiation of Five-Year (“Sunset”) Reviews, 71 FR 43443 (August 1, 2006). The Department received a notice of intent to participate from the following domestic parties: the Rebar Trade Action Coalition and its individual producer members, Nucor Corporation, CMC Steel Group, and Gerdau Ameristeel, as well as domestic producers TAMCO Steel and Schnitzer Steel Industries, Inc. (“Schnitzer”) (collectively “domestic interested parties”), within the deadline specified in 19 CFR 351.218(d)(1)(i). The companies claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States.

The Department received a complete substantive response to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). In this response, Cascade Steel Rolling Mills, Inc. (“Cascade”) was substituted for Schnitzer as a domestic interested party. Cascade is a wholly owned subsidiary of Schnitzer. Also, Steel Dynamics, Inc. (“SDI”) was added as a domestic producer. Because SDI did not file a notice of intent to participate in this review, it is not eligible to file a substantive response. See 19 CFR 351.218(d)(iii)(A). Therefore, the domestic interested parties are now the Rebar Trade Action

¹ See Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 68 FR 71067 (December 22, 2003); Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 69 FR 74498 (December 14, 2004); Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 71 FR 7016 (February 10, 2006); and Notice of Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia, 71 FR 45031 (August 8, 2006).

Coalition and its individual producer members Nucor Corporation, CMC Steel Group, and Gerdau Ameristeel, as well as TAMCO Steel, and Cascade.

The Department received a complete substantive response from respondent interested party, Joint Stock Company Liepajas Metalurgs (“LM” or the “respondent interested party”) within the deadline specified in 19 CFR 351.218(d)(3)(i). On September 5, 2006, the Department received a rebuttal to LM’s substantive response from the domestic interested parties.

19 CFR 351.218(e)(1)(ii)(A) provides that the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting, on average, for more than 50 percent, by volume, or value, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. On September 20, 2006, the Department found that LM accounted for more than 50 percent of exports by volume of the subject merchandise from Latvia to the United States. See Memorandum to Susan H. Kuhbach, Director, from Damian Felton entitled, “Adequacy Determination in Antidumping Duty Sunset Review of Steel Concrete Reinforcing Bars from Latvia,” (September 20, 2006). In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the International Trade Commission (“ITC”) the magnitude of the margins of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

The domestic interested parties believe that revocation of this antidumping duty order would likely lead to a continuation or recurrence of dumping by the Latvian manufacturers, producers, and exporters of the subject merchandise due to continued dumping.

The domestic interested parties state that the volume of imports subject to this order declined significantly after the imposition of the order, and has not recovered. The antidumping duty

margin in the first review for LM was 0.87 percent and then the margin increased to 3.01 percent in the second review, and was 5.24 percent in the third review. In the current administrative review, the preliminary margin for LM is 6.03 percent. Thus, the domestic interested parties conclude that the substantial dumping margins and significant decline in the volume of imports following the issuance of the antidumping duty order demonstrate that revocation of the order will certainly lead to a continuation of dumping. See Substantive Response of domestic interested parties, at 4-7 (August 31, 2006).

LM states that it has not had to sell subject merchandise to the United States since September 2005 because its primary markets in Western and Central Europe have exhibited continued growth. Further, it has limited production capacity and has sold all its production at favorable prices to its traditional markets such as its home market, Russia, Belorussia, Ukraine, and Europe. Therefore, LM argues that the revocation of the order will have little effect on LM or the domestic industry. See Substantive Response of LM, at 5 (August 31, 2006).

LM also notes that although sales to the United States may resume should there be a change in European and U. S. consumption patterns, LM does not anticipate that sales to the United States would increase to levels any greater than existed in calendar year 2004, when LM's exports were subject to an antidumping duty deposit rate of less than one percent. LM argues that these sales would be negligible with respect to both total U.S. imports and total U.S. consumption of steel concrete reinforcing bar. See id. at 5. LM further argues that it does not possess an extensive sales network in the United States so sales would remain at minimal levels if the order were revoked. See id. at 5-6.

Domestic interested parties, in their rebuttal comments, reiterate that Latvian import levels have decreased drastically since the imposition of the order, and argue that this shows that LM cannot sell at pre-order levels in the United States at a non-dumped price, and that dumping will likely resume if the order is revoked. The domestic interested parties discount LM's capacity constraint argument and U.S. sales network arguments, saying that these alleged capacity constraints did not limit LM's exports to the United States prior to the order being issued. See domestic interested parties' Rebuttal Comments, at 2-3 (September 5, 2006).

Department's Position

Consistent with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), the Department's determinations of likelihood will be made on an order-wide basis. In addition, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. In addition, pursuant to section 752(c)(1)(B) of the Act, the Department considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping order.

Bureau of the Census data submitted by the domestic interested parties shows that imports of steel concrete reinforcing bars from Latvia were 303,997 net tons in 1999, the year before the initiation of the investigation. See domestic interested parties' Substantive Response, at Exhibit 2 (August 31, 2006). In 2000, the year prior to the imposition of the order, imports were 207,705 net tons. From 2001 through 2005, imports have fluctuated from between 33,662 to 121,881 net tons, but have always remained below pre-order levels. LM's ranged proprietary shipment data submitted in the public version of LM's substantive response at 7 (August 31, 2006) supports the public import statistics above. Given that dumping has continued at levels above *de minimis*, and imports are below pre-order levels, the Department determines that dumping is likely to continue or recur if the order were revoked.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

The domestic interested parties request that the Department report to the ITC the margins that were determined in the investigation. The domestic interested parties argue that margins have increased since the first administrative review, and import levels have decreased significantly since the imposition of the order. See domestic interested parties' Substantive Response, at 7-8 (August 31, 2006). The domestic interested parties recommend that the Department report the following anti-dumping margins to the ITC: For Joint Stock Company Liepajas Metalurgs and the all others rate, a margin of 17.21 percent.

LM requests that the Department report to the ITC the margins that were determined in a more recent administrative review. LM argues that the investigation rate was based on partial facts available and is, therefore, not reflective of LM's home-market and U.S. pricing prior to, during, or subsequent to the period of investigation. LM argues that margins calculated in subsequent reviews are more reflective of LM's actual home market and U.S. sale prices, and therefore, more indicative of LM's actual pricing behavior. See LM's Substantive Response, at 6 (August 31, 2006). LM recommends a simple average of the margins from all completed administrative reviews and notes that the fourth administrative review will likely be done before this sunset review is completed.

In their rebuttal comments, the domestic interested parties argue that import volumes have decreased significantly since the imposition of the order, which reflects the fact that pricing practices have been altered by the order. Therefore, the domestic interested parties argue that the lower dumping margins in later reviews do not reflect LM's behavior without the discipline of an order in place. See domestic interested parties' rebuttal comments (September 5, 2006) at 3-4.

Department's Position

Normally the Department will provide to the ITC the company-specific margin from the

investigation for each company. For companies not investigated specifically or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “all others” rate from the investigation. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC.

The Department does not agree with LM’s argument that its lower antidumping margins in recent administrative reviews are more reflective of its pricing practices, or that the investigation antidumping margin is unusable because it was calculated using partial facts available. The Department does not disregard an antidumping margin because of the inclusion of partial or total facts available. If dumping margins have declined over the life of an order and imports have remained steady or increased, the Department may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review. However, this is not the case here. LM’s administrative review margins have been lower than the investigation margin, but imports have decreased significantly, and actually ceased as of September 2005. See LM’s Substantive Response, at 5 (August 31, 2006).

The Department finds that it is appropriate to provide the ITC with the rate from the investigation for LM because it is the only calculated rate that reflects the behavior of the exporter without the discipline of an order in place. Thus, the Department intends to report to the ITC the margins listed below.

Preliminary Results of Review

We determine that revocation of the antidumping duty order on steel concrete reinforcing bars from Latvia would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
Joint Stock Company Liepajas Metalurgs	17.21
All Others	17.21

Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above

positions. If these recommendations are accepted, we will publish the preliminary results of review in the Federal Register.

AGREE _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date